

SECTION I. PURPOSE AND SCOPE.

.01 The purpose of this Revenue Procedure is to supersede Rev. Proc. 73-7, 1973-1 C.B. 753, by providing updated procedures of the Internal Revenue Service with respect to issuing rulings and determination letters on private foundation status under section 509(a) of the Internal Revenue Code of 1954 and operating foundation status under section 4942(j)(3), of organizations exempt from Federal income tax under section 501(c)(3). Another purpose is to set forth the procedures with respect to revocations, modifications, and reconsiderations of rulings and determination letters on private foundation and operating foundation status. See Rev. Proc. 72-4, 1972-1 C.B. 706, for procedures of the Service in processing applications for recognition of exemption from Federal income tax under section 501(c)(3). Requests for rulings or determination letters generally are governed by the procedures outlined in Rev. Proc. 72-3, 1972-1 C.B. 698. The general instructions for issuance of determination letters on the foundation status under section 509(a)(3) of nonexempt charitable trusts described in section 4947(a)(1) are contained in Rev. Proc. 72-50, 1972-2 C.B. 830.

.02 Section 3.02 describes the circumstances under which key District Directors issue determination letters on private foundation and operating foundation status and includes requests by an organization, (1) presumed to be a private foundation, (2) previously classified as other than a private foundation, and (3) to reconsider foundation status classification under certain circumstances. Section 4 provides for National Office review of determination letters on foundation status under sections 509(a) and 4942(j)(3) of the Code. Sections 5, 6, and 7 establish procedures for key District Directors to issue revocations and modifications of rulings and determination letters on foundation and operating foundation status. Section 8 establishes procedures for reconsideration by key District Directors of rulings and determination letters on private foundation and operating foundation status.

SEC. 2. GENERAL.

For the purpose of this Revenue Procedure the term "determination letter" includes a letter issued by a District Director on the basis of technical advice secured from the National Office. When used in this Revenue Procedure, the term "key District Director" means the District Director of one of the Employee Plans and Exempt Organizations key Districts.

SEC. 3. DETERMINATIONS OF FOUNDATION STATUS.

.01 Key District Directors will issue determination letters on foundation status. All adverse determinations issued by key District Directors (including adverse determinations on the foundation status under section 509(a) of nonexempt charitable trusts described in section 4947(a)(1)) are subject to the protest and conference procedures delineated in Rev. Proc. 76-33 page 43, this Bulletin.

.02 Key District Directors will issue such determinations in response to applications for recognition of exempt status under section 501(c)(3) of the Code, or to notifications on Form 4653, Notification of Foundation Status, [FNa1] submitted by organizations pursuant to section 508(b). Key District Directors will also issue such determinations in response to requests for determination of foundation status by organizations presumed to be private foundations under section 508(b), requests for new determination of foundation status by organizations previously classified as other than private foundations, and requests to reconsider status where the key District Director has decided to reconsider such requests. The requests described in the preceding sentence shall be made in writing. See section 8 for the circumstances in which key District Directors will reconsider rulings and determination letters on private foundation and operating foundation status. For information relating to the circumstances under which an organization presumed to be a private foundation under section 508(b) may request a determination of its status as other than a private foundation, see Rev. Rul. 73-504, 1973-2 C.B. 190.

.03 All requests for determinations referred to in the preceding paragraph should be made to the key District Director of Internal Revenue for the district in which is located the principal place of business or principal office of the organization.

.04 Where the issue of exemption under section 501(c)(3) of the Code is referred to the National Office for decision under the procedures of Rev. Proc. 72-4, the foundation status issue will also be the subject of a National Office ruling.

SEC. 4. NATIONAL OFFICE REVIEW OF DETERMINATION LETTERS ON FOUNDATION STATUS UNDER SECTIONS 509(a) AND 4942(j)(3) OF THE CODE.

.01 Section 9 of Rev. Proc. 72-4 provides that determination letters on exemption issues under section 501 of the Code are subject to National Office review. Determination letters concerning foundation status under sections 509(a) and 4942(j)(3) are also subject to review.

.02 If the National Office takes exception to a determination letter, the established procedures described in section 9 of Rev. Proc. 72-4 will be followed.

SEC. 5. REVOCATION OR MODIFICATION OF RULINGS OR DETERMINATION LETTERS UNDER SECTIONS 509(a) AND 4942(j)(3) OF THE CODE—GENERAL

.01 A ruling or determination letter respecting private foundation or operating foundation status may be revoked or modified by a ruling or determination letter addressed to the organization, or by a Revenue Ruling or other statement published in the Internal Revenue Bulletin.

.02 If a key District Director concludes, as a result of examining an information return or considering information from any other source, that a ruling or determination letter concerning private foundation status (including foundation status under 509(a)(3)

of a noncharitable trust described in section 4947(a)(1)) or operating foundation status should be modified or revoked, he should follow the procedures in section 6 or section 7 depending on whether the revocation or modification is adverse or non-adverse to the affected organization.

.03 Where there is a proposal by the Service to change foundation status classification from one particular paragraph of section 509(a) of the Code to another paragraph of that section, the procedures described in section 6 will be followed to modify the ruling or determination letter.

SEC. 6. ADVERSE REVOCATION OR MODIFICATION OF RULINGS OR DETERMINATION LETTERS UNDER SECTIONS 509(a) AND 4942(j)(3) OF THE CODE

.01 If a key District Director concludes that a ruling or determination letter concerning private foundation or operating foundation status should be revoked or modified, the organization will be advised in writing of the proposed adverse action, the reasons therefore, and the proposed new determination of foundation status. The key District Director will also advise the organization of its right to protest the proposed adverse action by requesting a Regional Office conference. The organization must submit to the key District Director within 30 days from the date of the proposed action, a statement of the facts, law, and arguments in support of its position.

.02 See sections 4, 5 and 6 of Rev. Proc. 76-33, page 655, this Bulletin for the balance of the appeal and protest procedures.

.03 The provisions of this section relating to protest and conference rights before a revocation or modification notice is issued are not applicable to matters where delay would be prejudicial to the interests of the Internal Revenue Service (such as in cases involving fraud, jeopardy, the imminence of the expiration of the statute of limitations, or where immediate action is necessary to protect the interests of the Government).

.04 Unless the effective date of revocation or modification of foundation status or operating foundation status letters is expressly covered by statute or regulation, such effective date generally is the same as the effective date of revocation or modification of exemption letters delineated in section 11.01 of Rev. Proc. 72-4.

SEC. 7. NON-ADVERSE REVOCATION OR MODIFICATION OF RULINGS OR DETERMINATION LETTERS UNDER SECTIONS 509(a) AND 4942(j)(3) OF THE CODE.

If the key District Director concludes that a ruling or determination letter concerning private foundation or operating foundation status should be revoked or modified and that such revocation or modification will not be adverse to the organization, he will issue a determination letter revoking or modifying foundation status. The determination letter will also serve to notify the organization of its foundation

status as redetermined. A non-adverse revocation or modification as to private foundation or operating foundation status will ordinarily be retroactive if the initial ruling or determination letter was incorrect.

SEC. 8. RECONSIDERATION OF RULINGS OR DETERMINATION LETTERS UNDER SECTIONS 509(a) AND 4942(j)(3) OF THE CODE

.01 In cases where an organization believes that it received an incorrect ruling or determination letter as to its private foundation or operating foundation status, the organization may request a key District Director to reconsider such ruling or determination letter. Except in rare circumstances the key District Director will only consider such requests where the organization had not exercised any protest or conference rights with respect to the issuance of such ruling or determination letter.

.02 If a key District Director in his discretion decides that reconsideration is warranted, the request will be treated as an initial request for a determination of foundation status and the key District Director will issue a determination on foundation status or operating foundation status under the procedures of section 3. If a non-adverse determination is issued it will also inform the organization that the prior ruling or determination letter is revoked or modified. Adverse determinations are subject to the protest and conference procedures set out in Rev. Proc. 76-33, page 655, this Bulletin.

.03 If the key District Director decides that reconsideration is not warranted, he will accordingly notify the organization. The organization does not have a right to protest the key District Director's decision not to reconsider.

SEC. 9. EFFECT ON OTHER DOCUMENTS.

Rev. Proc. 73-7, 1973-1 C.B. 753, and Sections 4.04 and .05 of Rev. Proc. 72-50, 1972-2 C.B. 830 are superseded.

FNa1. Form 4653 is no longer available for filing. Any determinations will be based on a previously submitted Form 4653.